

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2004-353-W/S – ORDER NO. 2005-290
JUNE 13, 2005

IN RE:	Application of Lake Wylie Community)	ORDER APPROVING
	Utilities, Inc. for Adjustment of Rates and)	RATES AND CHARGES
	Charges for Water and Sewer Service)	

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on an application for increases in water and wastewater rates and charges filed by Lake Wylie Community Utilities, Inc. (“LWCU”). LWCU’s application was accepted by the Commission pursuant to S.C. Code Ann. § 58-5-210 *et. seq.* and 26 S.C. Regs. 103-512.4 and 103-712.4. LWCU’s application was filed on December 7, 2004.

By correspondence, the Commission instructed LWCU to publish a prepared Notice of Filing, one time, in a newspaper of general circulation in the areas affected by LWCU’s application. The Notice of Filing indicated the nature of the application and advised all interested persons desiring to participate in the scheduled proceedings of the manner and time in which to file appropriate pleadings for inclusion in the proceedings. In the same correspondence, the Commission also instructed LWCU to notify directly, by U.S. Mail, each customer affected by the application by mailing each customer a copy of the Notice of Filing. By letter dated March 1, 2005, LWCU furnished the Commission

with an Affidavit of Publication demonstrating that the Notice of Filing had been duly published and a letter in which LWCU certified compliance with the instruction of the Commission to mail a copy of the Notice of Filing to all customers affected by the application. Mr. Wallace G. Martin filed a Petition to Intervene with the Commission.

The Office of Regulatory Staff made on-site investigations of LWCU's facilities, audited LWCU's books and records, and gathered other detailed information concerning LWCU's operations.

On April 12, 2005, a public night hearing was held in Rock Hill, South Carolina in the Anne Springs Close Library on the campus of York Technical College. All Commissioners were present at the night hearing. Also present at the hearing were customers of LWCU, who expressed opinions regarding LWCU's Application.

On April 27, 2005 at 10:30 a.m., a public hearing concerning the matters asserted in LWCU's application was held in the Commission's hearing room located at Synergy Business Park, 101 Executive Center Drive – Saluda Building, Columbia, SC. The full Commission, with Chairman Randy Mitchell presiding, heard the matter of Lake Wylie's application. John J. Pringle, Jr., Esquire represented LWCU. Ben Mustian, Esquire, and Shannon Bowyer Hudson, Esquire represented the Office of Regulatory Staff. Wallace G. Martin appeared *pro se* in this proceeding. F. David Butler, Esquire served as legal counsel to the Commission.

LWCU presented the testimony of John C. Malpeli, Owner of LWCU, and James Yokum, Jr., Accountant for LWCU. The Office of Regulatory Staff presented the testimony of Dawn Hipp, Project Specialist for the Office of Regulatory Staff Water and

Wastewater Department, and Roy Barnette, Office of Regulatory Staff Auditor. At the hearing, Mr. Martin elected to waive his rights as Intervenor and testified before the Commission as a Protestant. Mr. Doug Zaparados also testified before the Commission as a Protestant.

BACKGROUND AND PROCEDURAL MATTERS

LWCU is a privately owned company operating a water system and a wastewater collection and treatment system in York County. At the time of its Application, LWCU provided water and wastewater service to approximately two hundred seventy (270) residential customers and one (1) commercial customer, Lake Wylie Mobile Home Park. Mr. Malpeli is part owner of Lake Wylie Mobile Home Park as well as LWCU. LWCU's present rate schedule was approved by the Commission in Order Number 82-455 dated June 29, 1982 (Docket Number 82-66-W/S).

FINDINGS OF FACT AND EVIDENCE SUPPORTING FINDINGS OF FACT

After thorough consideration of the entire record in the LWCU hearing, including the testimony and all exhibits, and the applicable law, the Commission makes the following findings of fact and conclusions of law with respect to LWCU:

1. LWCU is a privately owned company operating a water system and a wastewater collection and treatment system in York County and is subject to the jurisdiction of the Commission pursuant to S.C. Code Ann. §58-5-10 et seq.

The evidence supporting this finding is contained in the application filed by LWCU, in the testimony of LWCU witness John C. Malpeli, and in prior Commission Orders in the docket files of the Commission, of which the Commission takes judicial

notice. By filing its application, LWCU admits that it is a public utility within the meaning of S.C. Code Ann. § 58-5-10 and submits itself to the jurisdiction of the Commission.

2. The appropriate test year period for purposes of this proceeding is the twelve-month period ending December 31, 2003.

LWCU chose to file its application on the twelve months ending December 31, 2003. Accordingly, LWCU chose the test year ending December 31, 2003. Based on LWCU's proposed test year, ORS utilized the same test period for its accounting and pro forma adjustments. A fundamental principle of the ratemaking process is the establishment of a historical test year as the basis for calculating a utility's operating margin and, consequently, the validity of the utility's requested rate increase. The test year is established to provide the basis for making the most accurate forecast of the utility's rate base, reserves, and expenses in the near future when the prescribed rates are in effect. *Porter v. South Carolina Public Service Commission*, 328 S.C. 222, 493 S.E.2d 92 (1997), citing *Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 282, 422 S.E. 2d 110 (1992). While the Commission considers a utility's proposed rate increase based upon occurrences within the test year, the Commission will also consider adjustments for any known and measurable out-of-test year changes in expenses, revenues, and investments, and will also consider adjustments for any unusual situations which occurred in the test year. Where an unusual situation exists which shows that the test year figures are atypical, the Commission should adjust the test year data. See *Southern Bell v. The Public Service Commission*, 270 S.C. 590, 244 S.E. 2d 278 (1978); see also, *Parker V.*

South Carolina Public Service Commission, 280 S.C. 310, 313 S.E.2d 290 (1984), citing *City of Pittsburgh v. Pennsylvania Public Utility Commission*, 187 P.A. Super. 341, 144 A.2d 648 (1958); *Southern Bell v. The Public Service Commission*, 270 S.C. 590, 244 S.E.2d 278 (1978). Based on the information available to the Commission, the Commission is of the opinion, and therefore concludes, that the test year ending December 31, 2003 is appropriate for the purposes of this request for a rate increase.

3. The Commission will use the operating margin as a guide in determining the lawfulness of LWCU's proposed rates and for the fixing of just and reasonable rates.

In its application, LWCU does not specify or propose a particular rate setting methodology. "The Public Service Commission has wide latitude to determine an appropriate rate-setting methodology." *Heater of Seabrook v. Public Service Commission of South Carolina*, 324 S.C. 56, 64, 478 S.E.2d 826, 830 (1996). ORS, in support of its position and recommendations in this case, presented in its exhibits and testimonies information regarding the operating margins for per books test year, test year as adjusted, and LWCU's proposed increase. Hearing Exhibit No.7, p. i (Synopsis) and Audit Exhibits A, A/W and A/S. ORS also presented various alternative operating margins and associated revenue requirements for those operating margins. Hearing Exhibit 6, Exhibit DMH-8. LWCU neither supplied any operating margin information in its application nor supplied sufficient information on which rates could be set using rate of return on rate base methodology. Because the only information available relates to operating margin methodology, the Commission finds that operating margin is the appropriate rate-setting methodology for use in this case.

4. The appropriate operating revenues of LWCU during the test year under present rates and after accounting and pro forma adjustments are \$34,120 for water service and \$34,120 for wastewater service, for a combined operating revenue of \$68,240.

LWCU's application shows per book test year total operating revenues of \$38,394 for water service and \$34,120 for wastewater service for a combined operating revenue of \$72,514. LWCU Application, Exhibit B-2.

ORS's proposed adjustment (ORS Adjustment #1A) results in a decrease to per book operating revenues for water service of (\$4,274). ORS began with the per book test year operating revenues of \$38,394 for water service and \$34,120 for wastewater service. ORS proposed no adjustments to the water or the wastewater revenues for the test year. ORS Witness Barnette Direct Testimony, P.6-7; Hearing Exhibit No. 7, Audit Exhibit A-1, p. 8. However, ORS does propose an adjustment to water service per book operating revenues to remove charges of \$4,274 which reflects testing charges imposed by the Department of Health and Environmental Control. LWCU Application, Exhibit B-2. S.C. Code Ann. §44-55-120(E) states "A water system may increase water rates to each service connection by an amount necessary to recover the cost of the safe drinking water fee without seeking approval of the Public Service Commission." As these charges are billed by LWCU to its customers and then passed through to DHEC, and because the Commission does not have the ability to approve these rates, ORS did not allow them to be included as revenue.

We find the adjustments proposed by ORS to be reasonable and adopt ORS's adjustments. The effect of the ORS adjustments reflects the test year revenues based on a Bill Frequency Analysis and, as stated by ORS Witness Barnette, were justified and verified by his audit. Therefore, we find the appropriate operating revenues for the test year after accounting and pro forma adjustments to be \$34,120 for water service and \$34,120 for wastewater service for a combined operating revenue of \$68,240.

5. According to the Application, LWCU is seeking an increase to its operating revenue of \$79,280 for water service and \$79,280 for wastewater service for a combined revenue increase of \$158,560 under its proposed rates. The evidence for this finding concerning the amount of the requested rate increase is contained in the application (as amended) by LWCU. LWCU Application, Exhibits B-2 and B-3. The application shows that the level of operating revenues for water service after the proposed increase is \$113,400 for water charges and \$4,274 for DHEC charges for water testing for total operating revenue for water service of \$117,674. The level of operating revenues for wastewater service after the proposed increase is \$113,400 for wastewater charges. The combined operating revenue after the proposed increase is \$231,074.

The testimony and exhibits of ORS witness Roy Barnette show that the level of operating revenues under the rates proposed by LWCU for water service are \$113,400 and for wastewater service are \$113,400, for a combined operating revenue of \$226,800 which reflects ORS's adjustment. As explained above, ORS did not allow the DHEC water testing charges to be included as revenue as those are billed by LWCU to its customers and then passed through to DHEC.

We adopt ORS's calculation of the adjustment to revenues of \$4,274 to eliminate DHEC testing fees, resulting in as adjusted water revenue of \$34,120 and as adjusted sewer revenue of \$34,120. However, we find that the revenues after the proposed increase are \$119,420 for water and \$119,420 for sewer. This is computed by utilizing total invoices of 3,412 as shown on ORS Exhibit DMH-5 and Exhibit DMH-6, Hearing Exhibit No. 6, times the proposed rate of \$35.00 each for water and sewer (Company Application) equals revenue of \$119,420 each for water and sewer. Therefore, the Commission finds that LWCUC is seeking an increase to its water revenues of \$85,300 and \$85,300 to its wastewater service revenues for a combined increase of \$170,600.

6. The appropriate operating expenses for LWCUC for the test year under present rates and after accounting and pro forma adjustments are \$155,051.

ORS offered certain adjustments affecting operating expenses for the test year. This section addresses the adjustments:

A) Legal Fees #1 [ORS Adjustment #3]

- 1) Position of LWCUC: LWCUC does not propose an adjustment relating to Legal Fees.
- 2) Position of ORS: ORS proposes to reduce O&M expenses for legal fees associated with this filing and reclassify these amounts to G&A Expenses – Rate Case Expenses in order to comply with recognized accounting procedures. The adjustment reduces O&M Contract Services – Water by (\$323) and Contract Services – Sewer by (\$322). ORS Witness Barnette Prefiled Testimony, p.7, ll. 14-18; Hearing Exhibit No. 7, Audit Exhibit A-1, p. 8.

- 3) Decision of the Commission: The Commission adopts ORS's adjustment reclassifying legal fees from O&M Expenses to G&A Expenses and reduces O&M Contract Services – Water by (\$323) and Contract Services – Sewer by (\$322).

B) Legal Fees #2 [ORS Adjustment #4]

- 1) Position of LWCUC: LWCUC proposes no adjustment to Legal Fees.
- 2) Position of ORS: ORS proposes to increase G&A Expense – Rate Case Expense to reflect a reclassification of legal fees paid during the test year and charged to Contract Service – Water and Contract Service – Sewer in accordance with Adjustment A (ORS Adjustment #3). ORS Witness Barnette Prefiled Testimony, pp.7-8; Hearing Exhibit No. 7, Audit Exhibit A-1, p. 9.
- 3) Decision of the Commission: As the Commission has accepted Adjustment A (ORS Adjustment #3), we also find the proposed increase to G&A Expense – Rate Case Expense to be in accordance with regulatory accounting principles; therefore, the Commission adopts the increase of \$645.

C) O&M Expenses – Repairs and Maintenance [ORS Adjustment #5]

- 1) Position of LWCUC: LWCUC proposes no adjustment to O&M Expenses – Repairs and Maintenance.
- 2) Position of ORS: ORS proposes to decrease O&M Expenses – Repairs and Maintenance by a total of (\$1,020). Witness Barnette testified that this adjustment removes invoices paid to J.G. Environmental, Inc. for services performed outside of the test year and reduces the expense in the Water

Department by (\$970) and in the Wastewater Department by (\$50). ORS Witness Barnette Prefiled Testimony, p. 8, ll. 3-7; Hearing Exhibit No. 7, Audit Exhibit A-1, p. 8.

- 3) Decision of the Commission: Because ORS found these services were performed outside of the test year and LWCU offered no further explanation for this expense, we accept the decrease in expenses and reduce O&M Expenses – Repairs and Maintenance by (\$970) for Water and (\$50) for Wastewater.

D) Laboratory Analysis and Bacteriological Sampling [ORS Adjustment #6]

- 1) Position of LWCU: LWCU proposes no adjustment for these expenses.
- 2) Position of ORS: ORS proposes to reallocate invoices paid to J. G. Environmental, Inc. for repairs and maintenance to correctly reflect the distribution of these expenses between the Water and Wastewater Departments. ORS Witness Barnette testified that these invoices were for services rendered in connection with laboratory analysis for wastewater operations and bacteriological sampling and analysis for water operations. During the year, \$6,039 of the laboratory analysis charges for wastewater operations was charged to the water department. Therefore, ORS proposes to reduce expenses in the water department by (\$6,039) and increase expenses in the wastewater department by \$6,039. ORS Witness Barnette Prefiled Testimony, p. 8; Hearing Exhibit No. 7, Audit Exhibit A-1, p. 9.
- 3) Decision of the Commission: The Commission finds ORS's adjustments to O&M expenses appropriate and in accordance with accepted regulatory accounting

principles; therefore, we accept the decrease to expenses of the water department of (\$6,039) and the increase to expenses of the wastewater department of \$6,039.

E) Taxes and License Fees #1 [ORS Adjustment #7]

- 1) Position of LWCU: LWCU proposes no adjustment related to amounts paid for Taxes and License Fees.
- 2) Position of ORS: ORS proposes to reclassify amounts paid for Taxes and License Fees on a new 2003 Dodge Ram, purchased in July 2003, from O&M Expenses – Transportation – Water, in the amount of (\$441), and Transportation – Sewer (\$441) to Taxes Other than Income – Water, in the amount of \$441, and Taxes Other Than Income – Sewer, in the amount of \$441. ORS Witness Barnette testified that these expenses included Title Fees of \$10, Sales Tax of \$300, License Plate Transfer Fees of \$13, and York County Property Taxes of \$559 for a total allocation of \$882. ORS Witness Barnette Prefiled Testimony, pp. 8-9; Hearing Exhibit No. 7, Audit Exhibit A-1, p. 9.
- 3) Decision of the Commission: The Commission finds ORS's reclassification of expenses for Taxes and License Fees appropriate for regulatory purposes. The Commission adopts a decrease in O&M Expenses – Transportation – Water, in the amount of (\$441), and Transportation – Sewer, in the amount of (\$441).

F) Taxes and License Fees #2 [ORS Adjustment #8]

- 1) Position of LWCU: LWCU proposes no adjustment for Taxes Other Than Income relating to Taxes and License Fees.

- 2) Position of ORS: ORS proposes to increase Taxes Other Than Income – Water \$441 and Taxes Other Than Income – Sewer \$441 to reflect the reclassification of these expenditures as detailed and discussed in Adjustment E (ORS Adjustment #7), above. ORS Witness Barnette Prefiled Testimony, p. 9, ll. 3-6; Hearing Exhibit No. 7, Audit Exhibit A-1, p. 11.
- 3) Decision of the Commission: For the reasons stated above in Adjustment E (ORS Adjustment #7), the Commission adopts ORS's adjustment to Taxes Other Than Income – Water and Sewer.

G) Chemical Expenses #1 [ORS Adjustment #9]

- 1) Position of LWCU: LWCU proposes no adjustment to Chemical Expenses.
- 2) Position of ORS: ORS proposes to increase O&M Expenses – Chemicals – Sewer \$100 by reclassifying Use Taxes paid during the year, to the state of South Carolina, on chemicals purchased out of the state and used in the wastewater treatment process in order to comply with recognized accounting procedures. When these Use Taxes were paid they were charged on the Lake Wylie books to Use Tax – Water \$50 and Use Tax – Sewer \$50. ORS Witness Barnette Prefiled Testimony, p. 9, ll. 7-13; Hearing Exhibit 7, Audit Exhibit A-1, p. 9.
- 3) Decision of the Commission: The Commission finds these expenses are more properly booked to O&M Expenses – Chemicals – Sewer and adopts ORS's proposal to reclassify these expenses as reasonable and consistent with regulatory accounting guidelines.

H) Chemical Expenses #2 [ORS Adjustment #10]

- 1) Position of LWCUC: LWCUC proposes no adjustment to Chemical Expenses.
- 2) Position of ORS: ORS proposes to reclassify and therefore reduce Use Taxes paid during the year from Taxes Other Than Income – Use Tax – Water (\$50) and Taxes Other Than Income – Use Tax – Sewer (\$50) and include the total of \$100 in O&M – Chemicals – Sewer as detailed and discussed in Adjustment G (ORS Adjustment #9), above. ORS Witness Barnette Prefiled Testimony, p. 9; Hearing Exhibit 7, Audit Exhibit A-1, p. 11.
- 3) Decision of the Commission: The Commission agrees with the ORS position on reclassification of Chemical Expenses as previously stated in Adjustment G (ORS Adjustment #9) and decreases Taxes Other Than Income – Use Tax – Water by (\$50) and Taxes Other Than Income – Use Tax – Sewer by (\$50).

I) PSC Assessment Fees #1 [ORS Adjustment #11]

- 1) Position of LWCUC: LWCUC proposes no adjustment for PSC Assessment Fees.
- 2) Position of ORS: ORS proposes to reclassify and therefore increase Taxes Other Than Income – Water \$323 and Sewer \$323 for the LWCUC's payment of PSC Assessment Fees in order to comply with recognized accounting procedures. When these fees were paid, LWCUC included them in G&A – Regulatory Fees – Water and Regulatory Fees – Sewer. ORS Witness Barnette Prefiled Testimony, pp. 9-10; Hearing Exhibit 7, Audit Exhibit A-1, p. 11.

- 3) Decision of the Commission: The Commission finds ORS's adjustment of \$323 for Taxes Other Than Income – Water and \$323 for Taxes Other Than Income – Sewer reasonable for accounting purposes.

J) PSC Assessment Fees #2 [ORS Adjustment #12]

- 1) Position of LWCUC: LWCUC proposes no adjustment for PSC Assessment Fees.
- 2) Position of ORS: ORS proposes to reclassify and therefore reduce G&A Regulatory Fees – Water (\$323) and Regulatory Fees – Sewer (\$323) for LWCUC's payment of PSC Assessment Fees. ORS proposes to include these fees in Taxes Other Than Income as explained in Adjustment I (ORS Adjustment #11). ORS Witness Barnette Prefiled Testimony, p. 10, ll. 3-7; Hearing Exhibit 7, Audit Exhibit A-1, p. 9.
- 3) Decision of the Commission: As explained in Adjustment I (ORS Adjustment #11), the Commission adopts ORS's adjustment to G&A Regulatory Fees of (\$323) for Water and (\$323) for Sewer.

K) NPDES Permit Fees [ORS Adjustment #13]

- 1) Position of LWCUC: LWCUC proposes no adjustment relating to permit fees.
- 2) Position of ORS: ORS Witness Barnette presented testimony that LWCUC paid the fee of \$800 for the National Pollutant Discharge Elimination System ("NPDES") permit but inadvertently charged one-half of the payment to the Water department. ORS proposes to reclassify the payment for the NPDES permit charged to Regulatory Fees – Water, which should have been charged to Regulatory Fees –

Sewer. ORS Witness Barnette Direct Testimony p. 10, ll. 8-12; Hearing Exhibit 7, Audit Exhibit A-1, p. 10.

- 3) Decision of the Commission: The Commission adopts the ORS position on NPDES permit fees as appropriate for regulatory purposes and reclassifies the payment from the Regulatory Fees – Water account to the Regulatory Fees – Sewer account.

L) Rate Case Expenses [ORS Adjustment #14]

- 1) Position of LWCUC: LWCUC proposes to adjust for rate case expenses associated with this filing. Per its application, LWCUC proposed \$10,000 to be allowed for rate case expenses to be amortized over a five-year period for a total adjustment of \$2,000. However, LWCUC Witness Malpeli indicated a request for a three-year amortization period. LWCUC Witness Malpeli Rebuttal Testimony p. 4, ll. 13-20.
- 2) Position of ORS: ORS proposes to amortize the rate case expenses of \$8,330 over a 5-year period. ORS Witness Barnette Direct Testimony p. 10, ll. 15-17; Hearing Exhibit 7, Audit Exhibit A-1, p. 10. The adjustment is comprised of \$2,225 for expenses for accounting services incurred after the test year and \$6,105 for incurred legal expenses. At the hearing, ORS did not object to LWCUC submitting an updated exhibit detailing rate case expenses which indicates total rate case legal expenses of \$25,727 consisting of \$8,585 for accounting fees and \$17,142 for legal fees. ORS considered time between rate cases as one measure for an amortization period. LWCUC's only rate case proceeding was in 1982 resulting in approximately 22 years between rate cases. However, ORS presented

testimony that a twenty two-year amortization period is too long and proposed a more reasonable amortization period of 5 years. ORS Witness Barnette Direct Testimony p. 10-11; Hearing Exhibit 7, Audit Exhibit A-1, p. 14. Using the ORS amortization period of 5 years with the updated rate case expenses from Hearing Exhibit 8, results in an adjustment of \$5,145.

- 3) Decision of the Commission: The Commission finds that the Applicant's proposed amortization period is appropriate and should be adopted. Ideally, the amortization period for the recovery of the rate case expenses should allow for recovery of those expenses between rate cases. However, it is impossible to foresee what the future holds and to state with any certainty when the Company may need to return to this Commission for rate adjustment. Lake Wylie acquired the utility in 1984 and this is the first time Lake Wylie has sought rate relief.

In *Hamm v. South Carolina Public Service Commission*, 309 S.C. 282, 422 S.E. 2d. 110 (1992), the Supreme Court of South Carolina stated:

Adjustments for known and measurable changes in expenses may be necessary in order that the resulting rates reflect the actual rate base, net operating income, and cost of capital. The adjustments are within the discretion of the Commission and must be known and measurable within a degree of reasonable certainty. Absolute precision, however, is not required.
(citing *Michaelson v. New England Tel. & Tel. Co.*, 121 R.I. 722, 404 A. 2d 799 (1979)).

While the Commission cannot state with absolute precision when the Company will return for another rate proceeding, the Commission must provide a sufficient amortization period under which Lake Wylie may recover its expenses.

The Commission finds a three-year amortization period reasonable in view of the testimony of Applicant witness Malpeli detailing the expenses incurred by the Applicant, and opining that the Company will return to this Commission for a rate case in three years, if not sooner. In particular, the expenses incurred by the Company recently in connection with the well pump on the Lake Wylie #2 well (Hearing Exhibit 2), and Mr. Malpeli's testimony that the utility's expenses for sewer operators doubled in August of 2004 (Malpeli Direct Testimony, p. 4, ll. 3-5), support the rate case amortization period we approve herein. We, therefore, approve total rate case expense of \$25,727 amortized over three years for an adjustment of \$8,576.

M) Property Taxes [ORS Adjustment #15]

- 1) Position of LWCUC: LWCUC proposed no adjustment for Property Taxes.
- 2) Position of ORS: ORS proposes to increase Taxes Other Than Income to reflect York County property taxes, in the amount of \$1,592, paid on the facility outside the test year. ORS Witness Barnette testified that ORS allocated the total taxes of \$1,592 to the Water and Wastewater Department based upon each department's percentage of Net Plant to the Total Net Plant (total plant less accumulated depreciation) as reflected on the Balance Sheet included with the application. The Net Plant balances as shown on the Balance Sheet were Water Department \$30,607 and Wastewater Department \$23,077. Total Net Plant as shown at December 31, 2003, is \$53,684. Therefore, the proportion of these taxes to be allocated to the Water department is \$30,607 divided by \$53,684 or 57% and the amount to be

allocated to the Wastewater department is \$23,077 divided by \$53,684 or 43%. The proposed allocation of the taxes to the Water Department is \$1,592 multiplied by 57% or \$908 and the amount allocated to the Wastewater Department is \$1,592 multiplied by 43% or \$684. ORS Witness Barnette Direct Testimony p. 11, ll. 5-17; Hearing Exhibit 7, Audit Exhibit A-1, p. 12.

- 3) Decision of the Commission: The Commission finds ORS's adjustments related to Property Taxes are reasonable and appropriate for regulatory purposes; therefore, the Commission adopts the increase to Taxes Other Than Income – Water of \$908 and Taxes Other Than Income – Sewer of \$684.

N) Drinking Water Fees #1 [ORS Adjustment #16]

- 1) Position of LWCUC: LWCUC did not propose an adjustment related to Drinking Water Fees.
- 2) Position of ORS: ORS proposes to reclassify one-half of two payments totaling \$2,160 which were paid to DHEC for Drinking Water Fees but were charged to the Wastewater department. ORS Witness Barnette testified that each payment was for \$1,080 all of which should have been charged to the Water department. The adjustment corrects the allocation of the payments by taking one-half of the total payments (\$2,160 divided 2) or \$1,080 and transferring it from the Wastewater department to the Water department. ORS Witness Barnette Prefiled Testimony, pp. 11-12; Hearing Exhibit 7, Audit Exhibit A-1, p. 10.

- 3) Decision of the Commission: The Commission adopts the ORS position on Drinking Water Fees expenses for LWCUC and finds the reallocation of \$1,080 from the Wastewater Department to the Water Department is reasonable.

O) Drinking Water Fees #2 [ORS Adjustment #17]

- 1) Position of LWCUC: LWCUC did not propose an adjustment related to Drinking Water Fees.
- 2) Position of ORS: ORS proposes to remove Drinking Water Fees paid to DHEC and charged to Regulatory Fee – Water, as this fee is a pass through to the customer. During the test year LWCUC made four payments to DHEC in the amount of \$1,079.75 each, for a total adjustment of \$4,319. ORS Witness Barnette Direct Testimony, p. 12, ll. 3-6; Hearing Exhibit 7, Audit Exhibit A-1, p. 10.
- 3) Decision of the Commission: The Commission finds ORS's adjustments and manner in arriving at these adjustments to be reasonable and verifiable. The Commission allows the ORS recommended adjustments to Regulatory Fee – Water expenses of (\$4,319) for removal of Drinking Water Fees charged as a pass through to the customers.

P) Plant in Service [ORS Adjustment #18]

- 1) Position of LWCUC: LWCUC proposes to allocate 40% of the cost of the vehicles owned by LWCUC and Lake Wylie Mobile Home Park to LWCUC. LWCUC proposes that the depreciation schedule for its existing water plant have a 20-year service life period, the gravity wastewater lines have a 25-year service life period and the wastewater treatment facility have a 20-year service life period.

- 2) Position of ORS: ORS proposes to allocate certain plant in service to the Lake Wylie Mobile Home Community. ORS allocated two vehicles, a pick-up truck and a dump truck, to LWCU as being used and useful by the utility. The vehicles used in the calculation of depreciation were allocated 50% to the Lake Wylie Mobile Home Community and 50% to LWCU. ORS Witness Barnette testified this allocation was based upon information provided by Mr. John Malpeli. Furthermore, the 50% which was allocated to LWCU was allocated one-half to the Water Department and one-half to the Wastewater Department as shown on ORS Audit Exhibit A-2. ORS calculated the depreciation on the vehicles using useful lives and rates furnished by ORS Witness Hipp.

ORS also proposes to reduce the Water and Wastewater depreciation expense for plant in service using ORS's recommended depreciation rates. ORS Witness Hipp recommended that the water plant mains and wells, acquired in 1984, be capitalized and depreciated over a 27-year service life period. In addition, the water mains installed in 1992 and 1996 should be capitalized and depreciated over a 38-year service life. ORS proposes that the gravity wastewater lines be capitalized and depreciated over a 40-year average service life period. ORS recommends that the wastewater treatment facility cost be capitalized and depreciated over a 27-year average service life period.

ORS determined that the total depreciation for the vehicles during the test year was \$2,352 and allocated this amount to the Water and Wastewater Departments with each department being allocated \$1,176 to its depreciation

expense accounts. ORS Witness Barnette calculated total depreciation for the Wastewater Department, including plant in service and vehicles, of \$4,454. ORS then compared this amount to the booked amount of \$7,408, which resulted in a reduction in depreciation expense for the Wastewater Department of (\$2,954). ORS Witness Barnette calculated total depreciation for the Water Department, including plant in service and vehicles, of \$3,919. ORS then compared this amount to the booked amount of \$7,311, which resulted in a reduction in depreciation expense for the Water Department of (\$3,392). The resulting reduction in depreciation expense is Wastewater (\$2,954) and Water (\$3,392) for a total reduction of (\$6,346).

- 3) Decision of the Commission: We find that ORS's adjustments for Water and Sewer Plant are appropriate and adopt them as computed. While LWCU presented no supporting evidence for its depreciation rates, ORS Witness Hipp testified she based her depreciation recommendations on the conclusions outlined in the Florida Public Service Commission Water and Wastewater System Regulatory Law as recommended by the NARUC staff. We also adopt ORS's allocation of plant in service as appropriate. Additionally, LWCU, in its responses to ORS's Data Requests, stated "There are 5 vehicles owned between LWMHC [Lake Wylie Mobile Home Park] and LWU [LWCU]. LWU [LWCU] owns a dump truck and a pickup truck." The Rebuttal Testimony of Company witness Yokum on page two (Tr. at 75) states "Because the Ford F-150 was sold in 2003, Mr. Barnette proposes that no depreciation be taken on that vehicle. I

understand his rationale. However, because the Dodge Ram is used solely by LWCUC, the entire basis must be allocated to the utility (\$28,221) and the appropriate depreciation expense for that vehicle is \$4,701.83, rather than \$2,352. Thus, the total depreciation expense for “Vehicles” should be \$4701.83, which should then be split equally between water and sewer operations. This change will increase the Company’s operating expenses accordingly.” The Commission agrees and finds that Depreciation Expense on vehicles should be \$4,702 based on service lives as recommended by ORS.

Q) Christmas Gifts [ORS Adjustment #21]

- 1) Position of LWCUC: LWCUC did not propose an adjustment relating to Christmas Gifts.
- 2) Position of ORS: ORS proposes to reduce G&A Expenses – Office Expense to remove Christmas gifts given to employees as not allowable for regulatory purposes. Lake Wylie Mobile Home Community included in its expenses \$888 for employee Christmas gifts consisting of \$388 for hams and turkeys and \$250 each to Best Buy and Wolf Camera for gift certificates. Twenty-five (25%), or \$222, of the gift amount was then allocated to LWCUC. ORS Witness Barnette Direct Testimony, p. 14, ll. 1-6; Hearing Exhibit 7, Audit Exhibit A-1, p. 10.
- 3) Decision of the Commission: The Commission finds purchasing Christmas gifts for employees is not an allowable expense for regulatory purposes; therefore, the Commission adopts ORS’s adjustment.

R) Fuel Costs

- 1) Position of LWCU: In his rebuttal testimony, LWCU Witness Yokum presented testimony that \$2,730.03 for expenses for fuel expenses incurred during the test year by Lake Wylie Mobile Home Park should be included in the test year expenses of LWCU.
- 2) Position of ORS: ORS proposed no adjustment relating to fuel costs.
- 3) Decision of the Commission: Company witness Yokum's Rebuttal Testimony on page three (Tr. at 76) states "Fuel expenses incurred during the test year for five vehicles totaled \$6,825.07 on LWMHC's books. At least 40% of this amount (\$2,730.03) should have been allocated to LWU, since there are 2 vehicles owned by LWU and 3 vehicles owned by LWMHC. That additional expense needs to be reflected in the Company's books as adjusted." The Commission finds that the fuel expenses are a necessary operating expense and concludes that \$2,730 should be included as fuel expense based on vehicle ownership.

Summary of Adjustments to Test Year Operating Expenses:

The adjustments to test year operating expenses for the combined water and wastewater operations adopted herein result in an increase in O&M Expenses of \$283; an increase in G&A Expenses of \$4,034; a decrease in Depreciation Expense of (\$3,996); and an increase in Taxes Other Than Income of \$3,020 for a total adjustment of \$3,341. Adding these adjustments to per books Total Operating Expenses for combined water and wastewater service of \$151,710 results in Total Operating Expenses As Adjusted of \$155,051.

7. The operating margin for combined water and wastewater service for the test year under present rates and after accounting and pro forma adjustments approved herein is (127.21%). Adjusted test year operations result in a “Net Income(Loss) for Return” of (\$86,811) for combined water and wastewater. Using the adjusted Net Income(Loss) for Return divided by Operating Revenues, produces an operating margin of (127.21%) for combined water and wastewater operations.

The following table indicates (1) LWCU’s gross revenues for the test year after adjustments approved herein under the current rate schedule for water and wastewater operations combined; (2) LWCU’s operating expenses for the test year after accounting and pro forma adjustments and adjustments for known and measurable out-of test year occurrences approved herein for water and wastewater operations combined; and (3) the operating margin under the presently approved schedule for the test year for water and wastewater operations combined:

TABLE A

<u>Before Increase As Adjusted</u>	
Operating Revenues	\$68,240
Operating Expenses	<u>155,051</u>
Net Operating Income(Loss)	(\$86,811)
Add: Customer Growth	<u>0</u>
 NET INCOME/(LOSS) FOR RETURN	 <u>(\$86,811)</u>
 Operating Margin	 <u>(127.21%)</u>
(Interest Expense For Operating Margin)	<u>\$0</u>

8. Based on the operating margin for the test year after accounting and pro forma adjustments, we find that LWCU has demonstrated a need for an increase in rates.

Adjusted test year operations reveal a combined operating margin of (127.21%). Expenses of operating the system outweigh the revenues of the system.

9. When applied to as adjusted test year operations, the rates requested and proposed by LWCUC result in an operating margin of 26.57%. Information concerning the effect of the proposed rates when applied to as adjusted test year operations of LWCUC is found in our Findings included herein. We find that the rates proposed by LWCUC would produce additional revenues of \$170,600 which result in an operating margin of 26.57%. See Findings of Fact #5.

10. The Commission finds that an operating margin of 12.40% is just and reasonable and results in just and reasonable rates to charge for the services offered by LWCUC.

S.C. Code §58-5-240(H) provides “The commission's determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record. The commission shall specify an allowable operating margin in all water and wastewater orders.” LWCUC did not propose an operating margin in its application or through testimony presented by its witnesses and did not present evidence supporting a reasonable operating margin.

ORS Witness Hipp presented the only evidence in the record before this Commission concerning a reasonable operating margin. Witness Hipp testified ORS suggested operating margins of 10-15% “is a more prudent balance between the consumer’s need for affordable, quality services and LWCUC’s financial health.” ORS Witness Hipp Direct Testimony p. 10, ll. 11-12.

LWCU Witness Malpeli presented testimony that the rates recommended by ORS “would only begin to address the historical losses suffered by the Company.” LWCU Witness Malpeli, Rebuttal Testimony, p. 3, l. 13. However, LWCU did not propose an operating margin that would provide adequate revenues prospectively.

LWCU Witness Malpeli testified at the hearing that the income from the Mobile Home Community had been used to pay the expenses of LWCU and to offset its losses. Transcript at pp. 49-50. Even if establishing rates based on historical losses was appropriate, the Commission finds LWCU has not suffered a financial hardship in that the Mobile Home Community has supplemented its revenues through increases in customers’ rent.

Regardless, establishing rates with the intent to recover past losses is considered improper retroactive ratemaking. “Generally, retroactive rate making occurs when a utility is permitted to recover an additional charge for past losses, or when a utility is required to refund revenues collected pursuant to its lawfully established rates.” *South Central Bell Tele. Co. v. Louisiana Pub. Serv. Comm’n*, 594 So.2d 357, 359 (La.1992). “A utility is entitled only to the opportunity to earn a reasonable return on its investment; the law does not insure that it will in fact earn the particular rate of return authorized by the Commission or indeed that it will earn any net revenues.” *Id.* at 359. The Commission cannot set rates to recover past losses of the company. It is the responsibility of the utility to pursue rate increases to adequately recover an acceptable operating margin.

LWCU Witness Malpeli also testified that recently LWCU was required to replace a pump and a well motor which would further add to LWCU’s expenses. Mr.

Malpeli further suggested the Commission consider these factors when setting an appropriate operating margin. LWCU Witness Malpeli Rebuttal Testimony, p. 4, ll. 7-9. The Commission does not consider the expenses incurred by LWCU to replace the pump and well motor appropriate for rate setting purposes. As evidenced by ORS Witness Barnette, these expenses occurred outside of the test year and have not been verified or substantiated as known and measurable. Further, ORS Witness Barnette testified these items should be covered by depreciation expenses as these items are substantial in value and will extend the life of the asset; therefore, the asset should be capitalized. Transcript at p. 167, ll. 1-14.

The Commission, therefore, finds the rates proposed by LWCU, and the resulting operating margin, have not been substantiated by the record in this case. The Commission authorizes an operating margin for combined water and wastewater operations of 12.40%. While this will result in a 170% increase in the rates charged, the Commission finds this operating margin is necessary to provide LWCU sufficient revenue to remain financially viable and adequately serve its customers.

11. The level of operating revenues required in order for LWCU to have an opportunity to earn a 12.40% operating margin is found to be \$184,248. The increased operating expenses for LWCU after adjustments relating to the authorized increase in operating revenues is \$161,396. This section addresses the adjustments related to the proposed increase:

A) Service Revenues [ORS Adjustment #19]

- 1) Position of LWCU: LWCU proposed to adjust service revenues relating to its proposed increase in the amount of \$79,280 for water service and \$79,280 for wastewater service for a combined service revenue increase of \$158,560. ORS Witness Barnette Direct Testimony, p. 13, ll. 12-14; Hearing Exhibit 7, Audit Exhibit A-1, p. 12.
- 2) Position of ORS: Based on the rates proposed by LWCU, ORS calculated proposed service revenue adjustment amounts of \$79,280 for Water and \$79,280 for Wastewater, resulting in a total combined service revenue increase of \$158,560. ORS Witness Barnette Direct Testimony, p. 13, ll. 9-11; Hearing Exhibit 7, Audit Exhibit A-1, p. 10. Hearing Exhibit 6, Exhibit DMH-6.
- 3) Decision of the Commission: Based on the herein approved operating margin of 12.40%, the Commission finds an adjustment to service revenues relating to the authorized increase in the amount of \$58,004 for water service and \$58,004 for wastewater service for a combined amount of \$116,008 is appropriate and reasonable.

B) Gross Receipts Taxes [ORS Adjustment #20]

- 1) Position of LWCU: LWCU did not propose an adjustment relating to Gross Receipts Taxes.
- 2) Position of ORS: ORS proposes to reflect the gross receipts taxes associated with the increase in rates proposed by LWCU. ORS Witness Barnette testified the gross receipts factor includes cost for administration, the Public Service Commission and the Office of Regulatory Staff. The ORS adjustment is computed using the ORS

- Proposed Increase Revenues of \$158,560 multiplied by the gross receipts factor of 0.007733226 resulting in an amount of \$1,226. This amount is allocated to the Water and Wastewater Departments with each bearing \$613 of this expense in Taxes Other Than Income. ORS Witness Barnette Direct Testimony, p. 13, ll. 15-21; Hearing Exhibit 7, Audit Exhibit A-1, p. 12.
- 3) Decision of the Commission: Based on the herein approved operating margin of 12.40%, the Commission adopts the adjustment to Taxes Other Than Income relating to the gross receipts tax in the amount of \$448 for the Water Department and \$448 for the Wastewater Department for a combined amount of \$896 as allowable for ratemaking purposes. This adjustment is calculated using the gross receipts factor of 0.007733226 as supplied by ORS Witness Barnette and applying that factor to the increase in revenues approved herein.

C) Income Taxes [ORS Adjustment #22]

- 1) Position of LWCUC: LWCUC proposed an adjustment to Income Taxes of \$19,925 after the Proposed Increase.
- 2) Position of ORS: ORS proposes to adjust for income taxes associated with revenues after the increase proposed by LWCUC. The total income taxes of \$19,028 were allocated to the Water and Wastewater departments based upon their net income before income taxes, Water \$40,921 or 49.59% (\$19,028 multiplied by 49.59% = \$9,436) and Wastewater \$41,592 or 50.41% (\$19,028 multiplied by 50.41% = \$9,592). ORS Witness Barnette Direct Testimony, p. 14, ll. 7-12; Hearing Exhibit 7, Audit Exhibit A-1, p. 13.

- 3) Decision of the Commission: Considering the Commission has approved a 12.40% operating margin, the Commission allows an adjustment to operating expenses for income taxes in the amount of \$5,448 for combined water and wastewater operations.

The following table indicates (1) LWCU's gross revenues for the test year after adjustments approved herein, under the authorized rate schedule for combined water and wastewater operations; (2) LWCU's operating expenses for the test year after accounting and pro forma adjustments approved herein for combined water and wastewater operations; and (3) the operating margin under the authorized rate schedule for combined water and wastewater operations:

TABLE B

	<u>After Increase</u>
Operating Revenues	\$184,248
Operating Expenses	<u>\$161,396</u>
Net Operating Income/Loss	\$ 22,852
Add: Customer Growth	<u>0</u>
 NET INCOME/(LOSS) FOR RETURN	 <u>\$ 22,852</u>
 Operating Margin	 <u>12.40%</u>
(Interest Expense For Operating Margin)	<u>\$0</u>

12. In order to meet the income requirement for the opportunity to earn an operating margin of 12.40%, LWCU will require additional revenues of \$116,008.

13. The Commission finds that the proposed reconnection fees for water and wastewater service and administration fees should be approved.

In its application, LWCUC asserted the reconnection fee was to reimburse the Company for all costs, including labor and materials, associated with re-establishing service after disconnect for non-payment, failure to make a deposit, or fraudulent or illegal use. LWCUC Application, Exhibit A, pp. 1-2. LWCUC Witness Malpeli testified the reconnection fee was to cover the costs of notifying the customer of pending disconnection and of disconnecting and reconnecting service. LWCUC Witness Malpeli Direct Testimony pp. 7-8. The Application also provided the administration fee is to cover the administrative cost of re-establishing service upon a change of customer where service has previously been established. LWCUC Application, Exhibit A, pp. 1-2. LWCUC Witness Malpeli also testified this fee is to offset the substantial time in inputting customer information and setting up a customer account incurred by LWCUC office personnel. LWCUC Witness Malpeli Direct Testimony p. 8. As a result, the Commission finds the proposed reconnection fees of \$150 for water and wastewater service and \$45 for administrative fees for water and wastewater service is appropriate. Although Commission regulations at 26 S.C. Code Ann. Regs. 103-532.4 (Supp. 2004) allow for the reconnection fee for wastewater to be set at \$250, the Applicant has requested a \$150 reconnection fee, and the Commission finds that to be a reasonable fee in this case.

14. The current performance bond of LWCUC is insufficient and does not meet the requirements of S.C. Code Ann. Section 58-5-720 (Supp. 2004).

S.C. Code Ann. Section 58-5-720 was amended in May 2000 and increased the required amounts of performance bonds to a minimum of \$100,000 and a maximum of \$350,000. Thereafter, the Commission's regulations were amended to provide for

determining the amount of bond required by each utility. 26 S.C. Code Regs. 103-512.3.1 (Supp. 2004) was amended to provide that the amount of the bond should be based on the total amount of certain expense categories.

ORS witness Hipp provided testimony concerning the performance bond filed by LWCUC. According to witness Hipp, LWCUC has on file a performance bond with a face amount of \$40,000 to provide \$20,000 of financial assurance for both the water and wastewater utility operations. The performance bond is secured by a personal Statement of Financial Condition as surety dated March 31, 2004 of Mr. John C. Malpeli, President of LWCUC. Witness Hipp opined that the performance bond is insufficient because it does not meet the statutory minimum required for the performance bond. Further, Ms. Hipp testified that the personal surety which indicates assets of \$658,165 filed to support the performance bond is sufficient to meet a required bond of \$100,000 for water operations and \$100,000 for wastewater operation pursuant to 26 S.C. Code Regs. 103-512.3.2 and 103-712.3. ORS Witness Hipp Direct Testimony pp. 5-7; Hearing Exhibit 6, Exhibit DMH-2.

Upon review of this issue, we find that LWCUC's bond does not meet the statutory requirements of S.C. Code Ann. Section 58-5-720 (Supp. 2004). The statute requires a minimum bond of \$100,000 up to a maximum of \$350,000. Therefore, based upon the test year expenses as calculated by ORS witness Hipp, the Commission finds that LWCUC should file a performance bond in the amount of \$100,000 for the water operations and \$100,000 for the wastewater operations, within 90 days from the date of this order.

15. The Commission finds that LWCU should maintain its books and records in accordance with the NARUC Uniform System of Accounts for Class C Wastewater Utilities, as adopted by this Commission.

LWCU Witness Yokum agreed to maintain LWCU's books and records under the NARUC Uniform System of Accounts. Transcript at pp. 91-92. The Commission's rules and regulations require water and wastewater utilities to use the NARUC Uniform System of Accounts. Keeping books and records in compliance with NARUC's Uniform System of Accounts will not only ensure compliance with 26 S.C. Code Regs. 103-517 and 103-719 but will also make regulatory audits easier and less burdensome.

CONCLUSIONS OF LAW

Based upon the Findings of Fact as contained herein and the record of this proceeding, the Commission makes the following Conclusions of Law:

1. LWCU is a public utility as defined in S.C. Code Ann. § 58-5-10(3) (Supp. 2004) and as such is subject to the jurisdiction of this Commission.
2. The appropriate test year on which to set rates for LWCU is the twelve month period ending December 31, 2003.
3. Based on the information provided by the parties, the Commission concludes the appropriate rate setting methodology to use as a guide in determining the lawfulness of LWCU's proposed rates and for the fixing of just and reasonable rates is operating margin.
4. For the test year of December 31, 2003, the appropriate operating revenues for combined water and wastewater service, under present rates and as adjusted

in this Order, are \$68,240, and the appropriate operating expenses for combined water and wastewater service, under present rates and as adjusted in this Order, are \$155,051.

5. We conclude that LWCU has demonstrated a need for a rate increase as operating expenses outweigh operating revenues. However, we cannot conclude that LWCU has demonstrated the need for the rates requested in its application as LWCU has not provided any evidence as to the reasonableness of those rates. The only evidence as to a reasonable and allowable operating margin was provided by ORS Witness Hipp. We conclude that an operating margin of 12.40% is fair and reasonable and results in rates which are just and reasonable.

6. In order for LWCU to have the opportunity to earn the 12.40% operating margin found fair and reasonable herein, LWCU must be allowed additional revenues of \$116,008.

7. The proposed reconnection fees and administrative fees are based on costs that are known and measurable.

8. The rates as set forth in the attached Appendix A are approved for use by LWCU and are designed to be just and reasonable without undue discrimination and are also designed to meet the revenue requirements of LWCU.

9. Based upon the requirements of S.C. Code Ann. Section 58-5-720 (Supp. 2004) and 26 S.C. Regs. 103-512.3.1 and 103-712.3.1 (Supp. 2004), LWCU shall post a performance bond of \$100,000 for the water service and \$100,000 for the wastewater service within 90 days from the date of this order. The performance bond shall be in a

form as allowed by S.C. Code Ann. Section 58-5-720 and 26 S.C. Code Regs. 103-512.3 through 103-512.3.3 (Supp. 2004).

IT IS THEREFORE ORDERED THAT:

1. LWCU is granted an operating margin for its wastewater service of 12.40%
2. The schedule of rates and charges attached hereto as Appendix A are hereby approved for service rendered on or after the date of this Order. Further, the schedule is deemed filed with the Commission pursuant to S.C. Code Ann. Section 58-5-240 (Supp. 2004).
3. Should the schedules approved herein not be placed into effect within three months of this Order, LWCU shall require written approval from this Commission to place the rates into effect.
4. LWCU shall maintain its books and records in accordance with the NARUC Uniform System of Accounts as adopted by this Commission.
5. Pursuant to and consistent with S.C. Code Ann. Section 58-5-720 and 26 S.C. Code Regs. 103-512.3.1 and 103-712.3.1 (Supp. 2004), LWCU shall post a performance bond with a face value of \$100,000 for water service and \$100,000 for wastewater service within 90 days from the date of this order.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)